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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

MARGARITO T. LOPEZ individually
and as successor in interest to Margarito
E. Lopez, Deceased; SONIA TORRES,
KENI LOPEZ, and ROSY LOPEZ,
individually,

Plaintiffs,

v.

CITY OF LOS ANGELES; JOSE
ZAVALA; JULIO QUINTANILLA; and
DOES 1-10, inclusive,

Defendants.

Case No.: 2:22-cv-07534-FLA-MAAx

Assigned to:

Hon. Judge Fernando L. Aenlle-Rocha
Hon. Mag. Maria A. Audero

**PLAINTIFFS' OPPOSITION TO
DEFENDANTS' MOTION TO
BIFURCATE LIABILITY FROM
DAMAGES**

FPTC: June 28, 2024
Trial: July 16, 2024

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 This Court should deny Defendants’ untimely motion to bifurcate liability
4 from damages (“Motion”) because bifurcation would not further the ends of judicial
5 economy and efficiency in this particular case. In this case, the evidence regarding
6 liability and damages is inextricably intertwined. All four Plaintiffs witnessed the
7 shooting of Margarito E. Lopez (“the decedent”) and maintain claims for negligent
8 infliction of emotional distress, in addition to Plaintiff Margarito T. Lopez’s claims
9 for excessive force, interference with familial relationship, battery, negligence, and
10 violation of the Bane Act. Plaintiffs seek compensatory damages for their emotional
11 distress on their negligent infliction claim, and Plaintiff Margarito T. Lopez
12 additionally seeks wrongful death damages and survival damages, including for the
13 decedent’s pre-death pain and suffering and loss of life. At trial, each Plaintiff will
14 testify about their observations of the incident and about damages.

15 In their Motion, Defendants propose bifurcating the trial into two phases—
16 determination of liability and entitlement to punitive damages in the first phase, and
17 the amount of compensatory and punitive damages in the second phase. This would
18 require calling each of the four Plaintiffs to the stand twice, first to discuss their
19 observations of the incident during the liability phase of trial, and then again to
20 discuss the damages during the second phase of trial. Other witnesses, including
21 Plaintiffs’ expert Dr. Bennet Omalu, the responding paramedics, and the medical
22 examiner, will also testify on issues relating to both liability and damages. In this
23 case, liability and compensatory damages should be tried in a single phase, such that
24 each witness would only be called to the stand once. No party has designated any
25 witness who would testify only as to damages. Defendants’ request for a separate
26 phase of trial would therefore be an unnecessarily inefficient and potentially
27 duplicative and cumulative presentation of evidence and testimony.

28 / / /

Specifically, Plaintiffs propose that the trial be conducted as follows: (1) Phase I—determination of liability, the amount of compensatory damages, and entitlement to punitive damages; (2) Phase II—the amount of punitive damages, if any. In this way, Defendants’ financial circumstances would only be admitted during the determination of the amount of punitive damages. Defendants’ Motion should also be denied because bifurcation of liability from damages would result in prejudice to Plaintiffs, whereas trying liability and damages in the same phase would not result in prejudice to Defendants. Bifurcating the determination of liability from compensatory damages creates a risk that jurors will return a defense verdict simply to avoid returning for a second phase of trial. Bifurcating liability from damages would also result in increased trial expenses for Plaintiffs in the form of additional fees for witnesses called during both phases of trial. Defendants’ argument that trying liability and compensatory damages would prejudice Defendants is purely speculative. For these reasons and the reasons set forth below, this Court should deny Defendants’ Motion.

II. ARGUMENT

A. DEFENDANTS’ MOTION IS UNTIMELY

As a threshold matter, this Court should deny Defendants’ Motion on the grounds that it is untimely. Defendants have noticed their motion for a date that falls after the final pretrial conference. The last day to file motions was April 5, 2024. (Dkt. No. 27). The last day to file motions *in limine* was May 3, 2024, and each party was limited to five motions *in limine*. (Dkt. No. 27). Defendants filed five motions *in limine*. (Dkt. No. 56-60).

B. DEFENDANTS HAVE NOT MET THEIR BURDEN OF DEMONSTRATING THAT BIFURCATION AT TRIAL IS WARRANTED BASED ON THE PARTICULAR FACTS AND CIRCUMSTANCES OF THE CASE.

The Court must exercise its discretion under Federal Rule of Evidence 42 based on the particular facts of the case before it and not bifurcate certain types of trials as

1 a matter of routine. *Clark v. I.R.S.*, 772 F. Supp. 2d 1265, 1269 (D. Haw. 2009); See
 2 also Fed. R. Civ. P. 42 advisory committee’s note (1966 Amendment)
 3 (“[S]eparation of issues for trial is not to be routinely ordered[.]”). In making the
 4 case-by-case determination whether to bifurcate, courts have been guided, not only
 5 by concerns for judicial economy, but also by notions of fundamental fairness.
 6 Bifurcation should be denied where one party would gain an unfair advantage over
 7 the other as a result. See, e.g., *Est. of Hill by & through Grube v. NaphCare, Inc.*,
 8 No. 2:20-CV-00410-MKD, 2022 WL 2177679 at * 2 (E.D. Wash. June 14, 2022)
 9 (listing factors), See also *Kimberly-Clark Corp. v. James River Corp.*, 131 F.R.D.
 10 607, 608-09 (N.D. Ga. 1989).

11 “A defendant seeking bifurcation has the burden of presenting evidence that a
 12 separate trial is proper in light of the general principle that a single trial tends to
 13 lessen the delay, expense and inconvenience to all parties.” *McCrae v. Pittsburgh*
 14 *Corning Corp.*, 97 F.R.D. 490, 492 (D.C. Pa. 1983). Generally, “the ‘normal trial
 15 procedure’ in the Ninth Circuit is to try liability and damages together because ‘the
 16 evidence usually overlaps substantially.’” *Firetrace USA, LLC v. Jesclard*, No. CV
 17 07-02001-PHX-ROS, 2011 WL 13183014, at *1 (D. Ariz. Feb. 15, 2011) (quoting
 18 *Hangarter v. Provident Life & Accident Ins. Co.*, 373 F.3d 998, 1021 (9th Cir.
 19 2004)). Bifurcation is inappropriate where the issues are so intertwined that
 20 separating them would “tend to create confusion and uncertainty.” *Clark*, 772 F.
 21 Supp. 2d at 1269 (quoting *Miller v. Fairchild Indus., Inc.*, 885 F.2d 498, 511 (9th
 22 Cir.1989)).

23 Here, Defendants, as the moving party, bear the burden of demonstrating why
 24 bifurcation of the action is appropriate. *Clark*, 772 F. Supp. 2d at 1269. Generalized
 25 assertions will not suffice. Defendants must make a detailed offer of proof which
 26 indicates the need for bifurcation. *Simpson v. Pittsburgh Corning Corp.*, 901 F.2d
 27 277, 283 (2d Cir. 1990). Defendants’ Motion makes no such showing. Because
 28 Defendants have failed in this regard, their Motion should be denied. Instead,

1 Defendants argue in conclusory fashion that the Court should bifurcate trial into two
2 phases to (1) avoid unfair prejudice and confusion; and (2) promote judicial
3 economy. As explained below, neither of these justifications warrant bifurcation in
4 this case.

5 **C. BIFURCATION OF LIABILITY AND DAMAGES WOULD BE**
6 **INAPPROPRIATE IN THIS CASE AND FOSTER DELAY,**
7 **CONFUSION AND INCONVENIENCE.**

8 Bifurcation of liability and damages would be inappropriate in this case where
9 witnesses and evidence are inextricably intertwined. Bifurcation here would result
10 in prejudice to the Plaintiffs, substantially increased costs, duplicative presentation
11 of evidence and testimony at multiple trials, needless complication, and the wasteful
12 utilization of jury time for separate trials. Plaintiffs do not object to bifurcation of
13 the determination of the amount of punitive damages into a separate phase, provided
14 that the jury determines Plaintiffs' entitlement to punitive damages in the first phase
15 of trial. As indicated above, Plaintiffs propose that the trial be conducted as follows:
16 (1) Phase I—determination of liability, the amount of compensatory damages, and
17 entitlement to punitive damages; (2) Phase II—the amount of punitive damages, if
18 any.

19 Factors to consider in ruling on a motion for bifurcation under Federal Rule of
20 Evidence, 42(b) include: "(1) whether the issues sought to be tried separately are
21 significantly different from one another; (2) whether the severable issues require the
22 testimony of different witnesses and different documentary proof; (3) whether the
23 party opposing the severance will be prejudiced if it is granted; and (4) whether the
24 party requesting the severance will be prejudiced if it is not granted." *Clark*, 772 F.
25 Supp. 2d at 1269; *BD ex rel. Jean Doe v. DeBuono*, 193 F.R.D. 117 (S.D.N.Y.
26 2000); *Smith v. Lightning Bolt Productions, Inc.*, 861 F.2d 363, 370 (2d Cir.1988).
27 These factors weigh in favor of denying Defendants' Motion in this case.

28 ///

1 1. Liability on Plaintiffs’ Claims for Negligent Infliction of Emotional
2 Distress is Intertwined with Plaintiffs’ Damages

3 First, the issues Defendants seek to try separately—determination of liability
 4 and compensatory damages—are not significantly different from one another. The
 5 determination of the shooting officers’ liability and the Plaintiffs’ damages both deal
 6 with the same set of facts, witnesses, and evidence. All four Plaintiffs in this case
 7 witnessed the shooting of Margarito E. Lopez, and all four Plaintiffs maintain a
 8 claim for negligent infliction of emotional distress. In their Motion, Defendants
 9 argue that “there is a lack of interrelated evidence in this case.” (Def. Mot. at 7:9).
 10 This is erroneous. One element of Plaintiffs’ claims for negligent infliction of
 11 emotional distress is that the Plaintiff suffered serious emotional distress. In order
 12 for the jury to determine whether Defendants are liable on Plaintiffs’ claims for
 13 negligent infliction of emotional distress, Plaintiffs will need to testify regarding
 14 their serious emotional distress in the liability phase of trial. Three of the
 15 Plaintiffs—Rosy Lopez, Keni Lopez, and Sonia Torres—do not have any claim
 16 other than their claims for negligent infliction of emotional distress. It would be
 17 inefficient, cumulative, and redundant to call the Plaintiffs to the stand during a
 18 second phase of trial to recapitulate their testimony regarding their damages
 19 stemming from witnessing the shooting of Margarito E. Lopez.

20 Additionally, Plaintiff Margarito T. Lopez seeks survival damages on his
 21 claims for excessive force under 42 U.S.C. 1983 and the Fourth Amendment,
 22 battery, negligence, and violation of the Bane Act. A component of the survival
 23 damages is the decedent’s pre-death pain and suffering. At trial, the police officers
 24 and the Plaintiffs will testify with respect to their observations of the decedent
 25 before, during, and after the shooting, including their observations of the decedent’s
 26 injuries caused by the shooting. Additionally, Plaintiffs have retained Bennet
 27 Omalu, M.D., to opine on the trajectory of the gunshots, the characteristics of the
 28 gunshot wounds, the decedent’s conduct at the time of the shots, the decedent’s

1 conscious pain and suffering, and the decedent's injuries and cause and manner of
2 death. Dr. Omalu's opinions are relevant to both liability and damages, and his
3 opinions are based on the same evidence, including the videos and the autopsy
4 report. It would be inefficient to call Dr. Omalu to the stand twice. Calling Dr.
5 Omalu to the stand twice would also result in prejudice to Plaintiffs, who would
6 incur significant additional costs to secure this expert's time testifying in two
7 separate phases of trial.

8 It is also anticipated that the responding paramedics will testify with respect
9 to the decedent's injuries and condition after the shooting, and that the medical
10 examiner will testify as to the decedent's injuries and cause and manner of death.
11 Testimony regarding the gunshot wounds sustained by the decedent and the medical
12 treatment provided to the decedent at the scene after the shooting is intertwined with
13 testimony regarding the number of shots fired, the trajectory of the gunshots, and the
14 timeline of the incident. Given the significant overlap between liability and
15 damages in the testimony of these witnesses and Dr. Omalu, it would be inefficient
16 to bifurcate liability from compensatory damages in this case.

17 Even though the decision whether or not to bifurcate a trial generally is within
18 the trial court's discretion, the Ninth Circuit has not hesitated to reverse a decision
19 to bifurcate where either the claims or the evidence are intertwined. For instance, in
20 *Miller v. Fairchild Industries, Inc.*, 885 F.2d 498, 511 (9th Cir. 1989), the Ninth
21 Circuit held that bifurcation of liability and damages in a case with claims for
22 negligent or intentional infliction of emotional distress would be improper, because
23 "liability is intertwined with the issue of damages . . ." *Id.* See also *United Airlines*
24 *v. Wiener*, 286 F.2d 302 (9th Cir. 1961). Similarly, in *De Anda v. City of Long*
25 *Beach*, 7 F.3d 1418, 1421 (9th Cir. 1993), the Ninth Circuit found an abuse of
26 discretion where the trial court bifurcated claims against individual sheriff deputies
27 from claims against the sheriff and the municipality, because the sheriff's decisions
28 might have contributed to a violation of the plaintiffs' rights and a separate trial for

1 municipal liability “would likely be duplicative.” Likewise, in *Wiener*, the Court
 2 held that “issues of liability and damages, exemplary or normal, are not so distinct
 3 and separable that a separate trial of the damage issues may be had without
 4 injustice.” 286 F.2d at 306. As *Weiner*, *Miller* and *De Anda* demonstrate, careful
 5 attention to the plaintiffs’ liability and damages theories, and to the testimony and
 6 evidence necessary to prove each claim, is important when considering bifurcating a
 7 single trial into two separate trials.

8 **2. Bifurcation Would Not Serve the Goals of Judicial Economy and** 9 **Efficiency**

10 Second, the purported “severable issues” do not require the testimony of
 11 different witnesses or different documentary proof. In their Motion, Defendants
 12 argue that bifurcation would “save time of calling witnesses who would otherwise
 13 not be called to testify in the liability or damages phases.” (Def. Mot. at 8:12-14).
 14 However, neither Plaintiffs nor Defendants have designated any witness to testify
 15 solely as to damages. This is not a case where the plaintiffs have retained a parade
 16 of expert witnesses to opine only on their damages, whose testimony would be moot
 17 if the jury determined that the defendants were not liable. Any witness in this case
 18 who would testify as to damages would also testify as to liability. As such, if
 19 liability and compensatory damages were severed into separate phases, then
 20 testimony would be duplicative, such that bifurcation would not serve the interests
 21 of judicial economy. The breadth of resources necessary to conduct two separate
 22 trials will unnecessarily tie up the parties, the Court, and witnesses in additional trial
 23 time. For example, bifurcating the trial would require the introduction of two
 24 separate jury instructions and two separate verdict forms and would place a much
 25 heavier burden on the Court’s resources than having a single trial on both issues.

26 As indicated above, all four Plaintiffs will testify during the liability phase
 27 regarding their observations of the incident and their serious emotional distress that
 28 is an element of their negligent infliction claim. Calling the Plaintiffs back to the

1 stand during a second phase of trial to further discuss their emotional distress would
 2 not save any time. Rather, it would save time to allow the Plaintiffs to provide any
 3 additional testimony regarding damages when they are already on the stand
 4 testifying about their observations of the incident, in support of their negligent
 5 infliction of emotional distress claims.

6 In addition to seeking survival damages and damages for his serious
 7 emotional distress, Plaintiff Margarito T. Lopez also seeks wrongful death damages
 8 on his claims for interference with familial relations under 42 U.S.C. 1983 and the
 9 Fourteenth Amendment, and also on his claims for battery and negligence. The
 10 other three Plaintiffs in this case do not seek survival or wrongful death damages. It
 11 would promote judicial economy to allow Plaintiffs to testify as to Margarito T.
 12 Lopez's loss of the decedent's love, affection, etc. (wrongful death damages) and
 13 Margarito E. Lopez's loss of life (survival damages) during the same phase of trial
 14 as the determination of liability, rather than conducting a second phase of trial to
 15 present testimony on these damages. The same applies to Dr. Omalu, the
 16 responding paramedics, and the medical examiner, whose testimony regarding the
 17 gunshots and the decedent's injuries and cause and manner of death is intertwined
 18 with the decedent's survival damages, including his pre-death pain and suffering.

19 **3. Plaintiffs Will Suffer Prejudice if Liability is Bifurcated from** 20 **Damages**

21 Third, Defendants' Motion should be denied because Plaintiffs will be
 22 prejudiced if damages were bifurcated from liability. Bifurcation exerts pressure—
 23 conscious or unconscious—on jury psychology during the first phase of trial. In a
 24 bifurcated trial, a jury may realize (or it may even be suggested to them by counsel)
 25 that if they return a verdict for Defendants, then they will not have to come back to
 26 court for the second phase. In other words, bifurcation rewards jurors who return a
 27 defense verdict with an early release from jury duty, and punishes those who return
 28 a plaintiff's verdict by requiring them to stay for additional days of trial. For these

1 reasons, bifurcation of liability from damages poses an additional risk of prejudice
2 to Plaintiffs.

3 Moreover, bifurcation would not reduce jury confusion, as Defendants argue,
4 but rather enhance it, as jurors would be asked to determine Defendants' liability,
5 but would not be allowed to determine the amount of damages to which Plaintiffs
6 are entitled. It would leave jurors with a sense of emptiness which would defeat
7 their role in the justice system. "A juror can neither fully participate in nor fairly
8 resolve a trial when relevant information is withheld. If denied significant portions
9 of the full story, the juror will not know what questions to ask." Jennifer M.
10 Granholm & William J. Richards, *Bifurcated Justice: How Trial Splitting Devices*
11 *Defeat the Jury's Role*, 26 U Tol. L. Rev. 505, 507 (1995). Additionally, bifurcation
12 of the trial will increase the costs of litigation as Plaintiffs will be forced to conduct
13 two trials, including by calling Dr. Omalu on two separate occasions. By increasing
14 the time and expense of presenting this case to the jury, bifurcation would cut across
15 the remedial purposes behind section 1983.

16 **4. Defendants Will Not Suffer Prejudice if Liability and Damages are**
17 **Tried in the Same Phase**

18 In their Motion, Defendants argue that "any testimony as to emotional
19 damages suffered by Plaintiffs during the liability phase will only seek to prompt an
20 emotional response from the jury and play on their sympathies . . . [and result in]
21 unfair prejudice to the Defendants." (Def. Mot. at 6:10-16). This argument is
22 erroneous. Plaintiffs' testimony regarding their emotional damages will not "only
23 seek to . . . play on [the jury's] sympathies." To the contrary, Plaintiffs' testimonies
24 regarding their emotional damages are critical to their claims for negligent infliction
25 of emotional distress. To determine liability in this case, the jury will review the
26 videos capturing the fatal shooting of Margarito E. Lopez and hear testimony
27 regarding observations of the shooting and the decedent's resulting injuries and
28 death. Additional testimony by Plaintiffs regarding Margarito T. Lopez's wrongful

1 death damages and the decedent's loss of life, which Defendants argue should be
2 severed into a separate phase of trial, is unrelated to Margarito T. Lopez's emotional
3 distress and grief, making Defendants' argument unpersuasive. *See* CACI 3921
4 (Wrongful Death). Further, this case inherently has emotional elements. The
5 multiple gunshot wounds will be discussed during the liability presentation at trial.
6 That the violent shooting death of Margarito E. Lopez, captured on video, may
7 evoke a sympathetic response from jurors, does not establish prejudice to
8 Defendants.

9 **III. CONCLUSION**

10 For the foregoing reasons, Plaintiffs respectfully request that Defendants'
11 motion be denied and request that the trial be conducted as follows: (1) Phase I—
12 determination of liability, the amount of compensatory damages, and entitlement to
13 punitive damages; (2) Phase II—the amount of punitive damages, if any.

14
15 DATED: June 21, 2024

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